IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.2235 OF 2006

IN

SUMMONS FOR JUDGMENT NO. 74 OF 2006

IN

SUMMARY SUIT NO. 1597 OF 2005

L & T Finance Limited ... Plaintiff

versus

Vikram Bulk Carriers ... Defendants

Mr.Mayur Bhojani,i/b M.K.Ambalal & Co for Plff

None for Defendants in support of NM

CORAM: SMT.ROSHAN DALVI, J

DATE : 14th November, 2006

P.C.

1. The suit was filed on 29th March, 2005. The Writ of Summons was served upon the defendants by registered post on 10th December, 2005. The

defendants entered appearance on 20th December, 2005. The plaintiff took out Summons for Judgment and served upon the defendants on 21st February, 2005. The defendants did not file the affidavit in reply to the Summons for Judgment and did not enter any defence thereupon. The Summons for Judgment came to be made absolute and an exparte decree came to be passed in favour of the plaintiff on 19th June, 2006.

2. The defendants have sought to set aside that ex parte decree. They contend that they have asked for inspection of the original documents relied upon by the plaintiff upon entering appearance. Though inspection was fixed, it was not taken because of the marriage of the defendant's proprietor's son and illness of the defendant's advocate's brother for which he was required to visit Navsari in Gujrat. The defendants have thus explained their absence and non filing of the affidavit in reply.

3. The defendants contend that the plaintiff have played a fraud and got a forged Memorandum of Understanding executed for purchase of defendant's property worth Rs.23,52,8,670/.

4. Though execution of the Memorandum of Understanding is denied, the execution of the short term loan agreement dated 28th April, 1999 which forms the basis of the plaintiff's action is not denied. Executionof the higher purchase agreement by the plaintiff to the defendants is also not denied. The defendants claim that they had not executed any collateral security and have specifically orally informed the plaintiffs that they would not furnish any such security. Consequently, they did not deposit the original title deeds of their property with the plaintiffs as collateral security.

5. However, the affidavit of the defendants shows adjustment of certain freight charges in addition to payments made in cash (which is inconsequential and cannot be proved) and the factum of the surrender of the 47 trucks by the defendants. This shows taking of a large amount of loan under short term loan agreement by the defendants from the plaintiffs. On merits, therefore, the amount due and payable by the defendants only is required to be calculated. The short term loan facility marked Exhibit B to the affidavit in support of then

Notice of Motion shows financing of loan to the extent of Rs.206 lacs. The EMI to be paid are to the extent of Rs.51,60,000/- payable p.m. The written agreement between the parties shows interest payable @ 18% p.a. and upon the defendants paying penal interest at rateof 24 % p.a. Such a contract between the parties is required to be complied by both the parties.

6. The plaint shows total amount of Rs.4,32,64,634/- payable by the defendants on the principal amount of Rs.206.00 lacs which is reflected in the written agreement Exhibit B to the affidavit in support of the Notice of Motion.

7. It is undoubted that the defendants are required to pay to the plaintiffs a large part of the loan. Despite a lengthy affidavit in support of the Notice of Motion, the defendants have not shown how much of the loan taken from the plaintiff is repaid. No loan account is also shown. Even if execution of the Notice of Motion is disputed, the liability under the loan agreement which carries interest @ 24 % p.a. upon the default cannot be under estimated.

8. The defendants have yet to defend the suit diligently. The affidavit in reply was not filed. Prima facie, it shows lack of defence on merits to adjudicate upon the defendant's loan claim. On the alleged fraud and forgery of one of the documents, the defendants will be required to be heard. However, in these circumstances, the defendants cannot be heard untill sufficient portion of the loan is secured. The short term loan facility was granted on 28th April,1999 at the agreed rate of interest the amount payable by the time the suit was filed in 2006 would be more than double. The particulars of claim show such amount payable. The principal amount is less than half of the amount claimed in the suit.

9. Hence, the following order :

Upon the defendants depositing in Court Rs.2 crores within 8 weeks, the Notice of Motion is made absolute interms of prayer (a) (b) and (c). Upon deposit being made within 8 weeks as aforesaid, the Summons for Judgment shall be fixed for hearing in the week beginning 29th January, 2007. If the

amount is not deposited, the plaintiff shall be entitled to execute the decree after a period of eight weeks.

(Smt R.S.Dalvi,J)